

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:18-CV-00247-FDW-DCK**

**NICHELLE ROSEBORO,**

**Plaintiff,**

**v.**

**EATON CORPORATION DISABILITY  
PLAN FOR U.S. EMPLOYEES  
EATON CORPORATION  
EATON HEALTH AND WELFARE  
ADMINISTRATIVE COMMITTEE,**

**Defendants.**

**ORDER**

THIS MATTER is before the Court *sua sponte* upon further review of Parties' motions. (Docs. No. 17, 19). The Court notes that the benefits plan states that for both the first-level and second-level appeals,

The Claims Administrator will send you, at no extra charge, any new or additional evidence or rationale that is considered, relied on or generated in connection with your appeal of the claim. This information must be provided to you as soon as possible so you have a reasonable amount of time to respond before the date of the final determination of the claim.

(Tr. 1597; see also Tr. 1598 (requiring the same standards for the second-level appeal)). There is currently a lack of briefing on the issue of whether this language in the plan obligated Defendants to notify Plaintiff of the medical opinions of Dr. Tontz and Dr. Smith before issuing a final decision in the matter. It is also currently unclear to the Court the extent to which Plaintiff was notified of this new evidence and given a chance to respond to the evidence.

Therefore, the Court hereby ORDERS additional briefing, pointing to specific evidence from the record, on when and how Plaintiff was notified of Defendants' consultations with these

experts and whether the language in the plan obligated such notification. **These additional briefs will be no longer than 1500 words in length and should be filed by January 22, 2019.** The

Court does not anticipate a need for the filing of responses to the additional briefs.

IT IS SO ORDERED.

Signed: January 7, 2019

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney  
Chief United States District Judge

